

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-OR-386
	)	
Billy R. Autry	)	NAL/Acct. No.200332620012
Licensee of WKRA(AM)	)	
Holly Springs, Mississippi	)	FRN 0004-9301-45
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: March 17, 2003**

By the Enforcement Bureau, New Orleans Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Billy R. Autry (“Autry”), licensee of radio station WKRA(AM), Holly Springs, Mississippi, apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000) for willful violation of Section 73.49 of the Commission's Rules (“Rules”), and willful and repeated violation of Section 73.1745 of the Rules.<sup>1</sup> Specifically, we find Autry apparently liable for failing to enclose the station’s antenna within an effective locked fence or other enclosure, operating with excessive power during post-sunset hours, and failing to discontinue operation at night.

**II. BACKGROUND**

2. On November 18 and November 19, 2002, an agent from the FCC Enforcement Bureau’s New Orleans Office monitored WKRA(AM)’s signal from before sunset, through sundown, and into the nighttime hours until 10 PM Central Standard Time (“CST”). The agent conducted field strength measurements of the station’s signal during this time period and determined that WKRA(AM) failed to reduce power or to cease operation in accordance with its station authorization.<sup>2</sup>

3. On November 20, 2002, the agent inspected WKRA(AM)’s antenna tower which has radio

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<sup>1</sup> 47 C.F.R. §§ 73.49 and 73.1745.

<sup>2</sup> WKRA(AM) is a daytime-only station, licensed to operate at 1000 watts. The station has post-sunset authority in the month of November of 5.8 watts from 5:00 to 6:00 PM CST and then 3.8 watts from 6:00 to 7:00 PM CST. The station has no authority to operate beyond 7:00 PM CST.

frequency energy at the base. The fence enclosing the antenna tower had its gate unlocked and ajar and had one hinge broken. There was also no perimeter fence or other enclosure to prevent anyone from gaining access to the base of the tower.

### III. DISCUSSION

4. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed within effective locked fences or other enclosures. On November 20, 2002, WKRA(AM)'s antenna tower was not enclosed within an effective locked fence or other enclosure.

5. Section 73.1745 of the Rules states that "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license, unless otherwise provided in this part." WKRA(AM)'s license authorizes daytime-only operation and the station must either discontinue operation at sunset or reduce power to the minimal levels specified in the post-sunset authority at the times indicated. However, on November 18, 2002 and November 19, 2002, WKRA(AM) failed to reduce power to the levels indicated in its post-sunset authority, remaining on daytime power throughout this time period. Furthermore, WKRA(AM) failed to discontinue operation after the post-sunset authority and continued to operate for at least three hours past the time to discontinue operation.

6. Based on the evidence before us, we find Autry willfully<sup>3</sup> violated Section 73.49 of the Rules by failing to provide an effective locked fence enclosing the station's antenna tower, and willfully and repeatedly<sup>4</sup> violated Section 73.1745 of the Rules by failing to reduce power at sunset and then discontinue operation after the post-sunset authority.

7. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for violations involving AM tower fencing is \$7,000, and the base forfeiture amount for exceeding power limits is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Considering the entire record and applying the factors listed above, this case warrants an \$11,000 forfeiture.

### IV. ORDERING CLAUSES

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88(1991).

<sup>4</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> Billy R. Autry is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand dollars (\$11,000) for willful violation of Section 73.49 of the Rules by failing to provide an effective locked fence enclosing the station's antenna tower, and willful and repeated violation of Section 73.1745 of the Rules by operating with excessive power during the post- sunset authority hours and then failing to discontinue operation.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Billy R. Autry SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street S.W., Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>9</sup> See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Billy R. Autry, 145 Memphis Street, Holly Springs, Mississippi 38635.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins  
District Director, New Orleans Office  
Enforcement Bureau

Attachment